

These are the tentative rulings for civil law and motion matters set for Thursday, September 18, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, September 17, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0053987 Capital One Bank USA, N.A. vs. Torrance, Deborah D.

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 42:

Plaintiff's unopposed Motion to Set Aside and Vacate Judgment is granted. "The court may ... on motion of either party after notice to the other party, set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d).) The statute does not place any time limit on bringing such a motion. Additionally, the court has equitable power to set aside a void judgment at any time. "It is well settled that a judgment or order which is void on its face, and which requires only an inspection of the judgment-roll or record to show its invalidity, may be set aside on motion, at any time after its entry, by the court which rendered the judgment or made the order. [Citations.]" [Citations.] [Citation.] "A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor evidence of any right whatever." [Citation.] (*Tearlach Resources Limited v. Western States International, Inc.* (2013) 219 Cal.App.4th 773, 779.) Plaintiff has sufficiently established the existence of fraud, which renders the judgment void.

The judgment entered on February 4, 2013 is vacated.

2. M-CV-0054779 U.S. Bank, N.A. vs. Kobra Properties, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 42:

Plaintiff's Motion for Order Releasing Remaining Rent Deposited with the Court to Plaintiff

The unopposed motion is granted in its entirety. There is good cause to grant the release of the funds and no showing of prejudice to defendant. The remaining monies on deposit with the court, in the amount of \$42,000.00, are ordered released to plaintiff.

3. M-CV-0054780 U.S. Bank, N.A. vs. Kobra Properties, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 42:

Plaintiff's Motion for Order Releasing Remaining Rent Deposited with the Court to Plaintiff

The unopposed motion is granted in its entirety. There is good cause to grant the release of the funds and no showing of prejudice to defendant. The remaining monies on deposit with the court, in the amount of \$23,100.00, are ordered released to plaintiff.

4. M-CV-0059924 Deutsche Bank National Trust Company vs. Oschner, David

The motion to consolidate and/or stay is continued to October 2, 2014 at 8:30 a.m. in Department 40, to be heard in conjunction with the pending demurrer, at the request of the parties.

5. M-CV-0060144 Discover Bank vs. Farrell, Charles P.

Plaintiff's motion for judgment on the pleadings is continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 40 to afford plaintiff an opportunity to file a corrected request for judicial notice. Plaintiff's request filed on August 18, 2014 references an incorrect case number and does not attach a copy of the court order granting plaintiff's request to deem admissions admitted.

6. M-CV-0061032 L.A. Commercial Group, Inc. vs. Innova Vernon, LP, et al

Defendant's motion to set aside default judgment is dropped from the calendar as no moving papers were filed with the court.

7. M-CV-0061640 TRI Counties Bank vs. Scammon, Jeffrey

The appearances of the parties are required at the hearing.

Plaintiff's motion for summary judgment is granted. A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. (CCP§1170.7.) A party is entitled to bring a motion for summary judgment where there are no triable issues of fact. (CCP§437c.)

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a proper written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. (CCP§1161a(b)(3).)

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Plaintiff's Separate Statement of Undisputed Material Facts (SSUMF) Nos. 1, 2, 3.) Plaintiff also shows that defendants were served with notices to quit and to vacate. (Plaintiff's SSUMF No. 4.) Finally, Plaintiff submits evidence that Defendants remain on the property after the expiration of the notice. (Plaintiff's SSUMF No. 6.)

As Plaintiff has made a prima facie showing in support of summary judgment, the burden now shifts to the Defendant. Therefore, the appearance of all parties is required at the hearing as Defendant may appear to provide evidence of a triable issue of material fact either in writing or orally at the hearing. (CRC Rule 3.1351(b), (c).)

Plaintiff's request for telephonic appearance at the hearing is granted. In this instance, the court will contact counsel at the time the matter is called for hearing.

8. S-CV-0027264 JB Development, LLC vs. Brelle West Const. Mgmt., et al

The motion for reconsideration is denied. The same factors that informed the court's August 7, 2014 order, namely proximity of the trial date and ability of Liberty Surplus to pursue a separate action, still obtain.

9. S-CV-0032272 Green, Rodney, et al vs. Union Pacific Railroad Co.

Defendant's Motion for Summary Judgment

Ruling on Objections

The objections are overruled in their entirety.

Ruling on Motion

The motion is denied. The trial court shall grant a motion for summary judgment if “all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” (CCP§437c(c).) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) Plaintiffs have sufficiently established a triable issue of material fact to defeat the motion. Between April of 2011 through June of 2011, plaintiffs worked for defendant in the Bakersfield-Tulare area in areas with exposure to Valley Fever. (Plaintiffs’ SSUMF nos. 48, 64-77.) Bakersfield has one of the highest rates of Valley Fever in the state. (Id. at nos. 49, 52.) Tulare County and Fresno County also have higher rates of Valley Fever. (Id. at nos. 53, 54.) The transmission and exposure in the area were published by the CDC over the previous 10 years. (Id. at no. 55.) Defendant maintained offices and rail yards in the area where outbreaks of Valley Fever were prominent. (Id. at nos. 56-59.) Plaintiffs developed symptoms associated with Valley Fever and were ultimately diagnosed. (Id. at nos. 82, 85-87.) These facts are sufficient to establish a triable issue of material fact. For these reasons, the motion is denied.

10. S-CV-0032618 U.S. Bank, N.A. vs. Lake Orta Corporation

Plaintiff’s unopposed Motion for Summary Judgment and/or Summary Adjudication is granted. The trial court shall grant a motion for summary judgment if “all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) Plaintiff sufficiently established the existence and terms of the lease agreement between the parties. (Plaintiff’s SSUMF Nos. 7-28, 31, 32.) Defendant subsequently breached the terms of the lease. (Id. at No. 29.) Defendant remained on the premises after the foreclosure sale. (Id. at No. 33.) Plaintiff has also established \$427,205.67 in damages. (Id. at No. 30.) Since defendant has not shown a triable issue of material fact, the motion is granted.

11. S-CV-0032640 Owens, Dawn Carol vs. Duncan, Debra Lynn

The motion for terminating sanctions is continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 40 in order to allow defendant to rectify the insufficient funds issue surrounding the motion filing fee.

12. S-CV-0033186 Duncan, Bruce vs. Nationstar Mortgage, LLC

Defendant's Motion for Terminating Sanctions

The motion is denied in its entirety.

Plaintiff's Motion to Set Aside Order to Compel Discovery Responses

The motion is denied in its entirety. Plaintiff has not sufficiently established mistake, inadvertence, or excusable neglect to warrant relief under either CCP§473(b) or CCP§2033.300.

13. S-CV-0034160 Baeseman, Jennifer vs. Kahn & Comings, Inc., et al

The demurrer and motion to strike the second amended complaint are continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 40 to be heard in conjunction with the other pending demurrer and motion to strike.

14. S-CV-0034396 Ochsner, David A. vs. Deutsche Bank Nat'l Trust, et al

The motion to consolidate and/or stay is continued to October 2, 2014 at 8:30 a.m. in Department 40, to be heard in conjunction with the pending demurrer, at the request of the parties.

15. S-CV-0034614 Benkosky, Randy vs. Bank of America, N.A., et al

The demurrer to the first amended complaint is continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

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16. S-CV-0034804 Berberich, James, et al vs. Berberich, Joyce G., et al

Defendants' Demurrer to the First Amended Complaint

The demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Here, defendants challenge only the first cause of action for financial elder abuse.

Welfare and Institutions Code section 15610.30 et seq, also referred to as the Elder Abuse and Dependent Adult Civil Protection Act, was enacted to provide the "private, civil enforcement of laws against elder abuse and neglect." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33.) Financial abuse of an elder adult "occurs when a person or entity does any of the following [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence ...". (Welfare and Institutions Code §15610.30(a).) Upon review of the allegations in the FAC, plaintiffs have not sufficiently alleged facts to support a financial elder abuse cause of action. The deficiency lies in that the FAC is pled more around what affected plaintiffs rather than focusing upon what affected the decedent. This deficiency, however, may be remedied with an amendment to the pleading. Therefore, the demurrer is sustained with leave to amend.

The second amended complaint shall be filed and served on or before October 3, 2014.

Defendants' Motion to Strike the First Amended Complaint

In light of the court's ruling on the demurrer, the motion to strike is dropped as moot.

17. S-CV-0035086 Bradbury, Megan, et al - In Re the Petition of

The petition for minor's compromise is continued to September 25, 2014 at 8:30 a.m. in Department 40 at the request of the moving party.

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The OSC re preliminary injunction is continued, on the court's own motion, to September 25, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The temporary restraining order shall remain in effect pending the next hearing date.

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